

## REMARKS

### *Pending Claims*

Claims 1-16 are currently pending.

### *Rejections under 35 U.S.C. § 102*

The Examiner has rejected claims 1, 3-6, 8-10, and 13-16 under 35 U.S.C. § 102(e) as being anticipated by Rudrapatna (US Appl. Publ. No. 2004/0092233). However, at least for the reasons presented herein, Applicants respectfully submit that the rejection is traversed. In responding to the rejections, Applicants make no concession that any of the cited references are prior art, and Applicants reserve the right to antedate any reference at a later date and to present additional reasons why the claims are patentable.

In the Response to Arguments section on page 10 of the Office action mailed 07/28/2008, the Examiner states that Applicant's previously-submitted arguments against the Rudrapatna reference were insufficiently detailed. Without conceding this point, Applicant has nonetheless provided additional detail in the present Remarks to help the Examiner better understand why the Rudrapatna reference does not teach the elements of the claims.

The Examiner has failed to make a *prima facie* case for anticipation under Section 102 because the cited Rudrapatna reference does not disclose all of the elements of the claims. Among other features, Rudrapatna fails to disclose "a transmission rate determining part for determining a transmission rate in accordance with a size of transmission data to the mobile station," or equivalent language, as recited in claims 1, 6, 10, and 16.

While the portions of the Rudrapatna reference cited by the Examiner may address rates of transmission, nowhere in this reference is there a discussion of transmission rates being determined in accordance with a size of transmission data as recited in the claims.

More specifically, none of the portions of the Rudrapatna cited by the Examiner disclose this feature. On page 2, paragraph 2, of the Office action mailed 07/28/2008, the Examiner states that Figures 1 and 2 and paragraphs 0022 and 0023 of the Rudrapatna reference discloses "a transmission rate determining part for determining a transmission rate in accordance with a size of transmission data to the mobile station." However, Figure 1 is a general diagram of a communication network and Figure 2 shows a functional block diagram

of a CDMA base station, and neither figure discloses “a transmission rate determining part for determining a transmission rate in accordance with a size of transmission data to the mobile station.”

Paragraphs 0022 and 0023 of Rudrapatna, also cited by the Examiner, discuss the mechanisms by which power control commands are sent by the wireless terminal units (WTU) 16 to the base station. In paragraph 0022, it is noted that “a power control command (i.e., a power control rate command) sent by WTU 16 may inform the base station that subsequent power control commands from WTU 16 will occur at a specified rate.” Thus, this passage discloses the mechanisms of how the WTU 16 communicates power control information to the base unit. However, neither this nor any other passage of Rudrapatna teaches “determining a transmission rate in accordance with a size of transmission data,” as recited in claim 1. Other portions of paragraphs 0022 and 0023 describe details of how the WTU communicates power control information to the base unit: “demultiplexer 44 and transmission power controller 58 cooperate to extract and process power control commands at a variable rate/delay-time (e.g. after a specified number of frames) specified (via the power control information extracted by demultiplexer 44) by the WTU 16 that is in communication with transceiver 30.” Paragraph 0023.

The Examiner argues in the Response to Arguments section that Rudrapatna’s mention of “a specified number of frames” in the passage above teaches that “the transmission rate is adjusted according to the number of frames in the transmission data, which is the same as the size of the transmission data.” Pages 5-6, paragraph 5, of the Office action. However, it is clear that Rudrapatna’s reference to “a specified number of frames” pertains to the frequency at which power control commands are received by the base unit and which are extracted and processed by the demultiplexer 44 and transmission power controller 58.

Therefore, Applicant respectfully submits that the Rudrapatna reference fails to disclose all of the elements of claims 1, 6, 10, and 16, including “a transmission rate determining part for determining a transmission rate in accordance with a size of transmission data to the mobile station” as in claim 1 and equivalent language in claims 6, 10, and 16.

As for claims 3 and 13, Rudrapatna fails to disclose “attaching rate information specifying a transmission rate by each transmission frame in accordance with the

transmission data size” as claimed. As pointed out above, however, Rudrapatna does not disclose specifying transmission rates in accordance with transmission data size.

As for claim 4, Rudrapatna fails to disclose a mobile station having a transmission rate determining part “for estimating a transmission rate from a power distribution of a received signal.” Paragraph 0032 of Rudrapatna states that when “power control rate commands are not used to explicitly communicate rate changes, WTU 16 includes blind rate detection circuitry to dynamically extract the variable PC [power control] command rate.” However, Rudrapatna does not disclose that dynamically extracting the power control command is from a power distribution of a received signal as claimed.

For similar reasons, Rudrapatna fails to disclose the elements of claim 14.

Each of the remaining claims depends from an allowable claim and should be allowed for the same reasons that the respective parent claim is allowable, and also because each recites additional patentable subject matter.

#### *Rejections under 35 U.S.C. § 103*

The Examiner has rejected claims 2, 7, 11, and 12 as obvious over Rudrapatna in view of Guo (US Appl. Publ. No. 2006/0002338). However, at least for the reasons presented herein, Applicants respectfully submit that the rejection is traversed. In responding to the rejections, Applicants make no concession that any of the cited references are prior art, and Applicants reserve the right to antedate any reference at a later date and to present additional reasons why the claims are patentable.

The Examiner argues that Figure 4 and paragraphs 0056, 0057, and 0092 of Guo teach “the transmission power changing part reduces the transmission power when the transmission rate is large, and increases the transmission power when the transmission rate is small,” as recited in claims 2, 7, and 12. The cited portions of Guo pertain to adjusting transmission rates under certain conditions, but none of the cited portions teaches reducing transmission power when the transmission rate is large and increasing transmission power when the transmission rate is small.

Guo in fact teaches the opposite, teaching that power is increased when transmission rate increases: “In a CDMA network, when a transition from low rate transmission (for voice and control) to transmission at a high rate (e.g. 2 Mb/s) occurs, the overall power increase can be of the order of 10 to 25 dB, for example.” Guo, para. 0056. Indeed, Guo emphasizes “[a]

higher transmission rate therefore typically requires a greater transmission power to be used in order to overcome the increase in error rate.” Guo, para. 0009.

Hence, not only does Guo fail to teach the elements of the claims, Guo teaches away from reducing transmission power when the transmission rate is large. Therefore, Guo fails to supply the deficiencies of Rudrapatna and hence the combination of Rudrapatna in view of Guo is not obvious. In addition, Guo’s teaching away from the claims further indicates that the claims are not obvious.

As for claim 11, Guo does not teach a lookup table that shows the relations among the transmission data size, the error correction gain difference, and a change amount of the transmission power. While Guo briefly mentions the use of lookup tables, nowhere does Guo teach a lookup table that includes information about transmission data size. Guo simply refers to a table containing “an estimate  $P_{req}$  of the power required for adequate transmission of data signals.” Para. 0076. Guo fails to supply the deficiencies of Rudrapatna and therefore claim 11 is not obvious in view of the combined references.

In the Response to Arguments section of the 07/28/2008 Office action, the Examiner does not address why Applicant’s arguments against the Guo reference are not persuasive. Thus, Applicant respectfully requests that the Examiner explain the reasoning behind rejecting Applicant’s previously-submitted arguments as to why the combination of Rudrapatna and Guo does not render claims 2, 7, 11, and 12 obvious.

**CONCLUSION**

In view of the remarks and amendments presented herein, reconsideration and withdrawal of the pending rejections and allowance of the claims are respectfully requested. The Examiner is strongly encouraged to contact the undersigned at the phone number below should any issues remain with respect to the application.

No other fees are believed due in connection with this submission. However, if additional fees are owed, please charge Deposit Account 50-1965.

Respectfully submitted,  
MICHAEL BEST & FRIEDRICH LLP

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By:

/thomas j. keating/

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Thomas J. Keating, Reg. No. 59,110  
Tel.: 608-257-3501

Michael Best & Friedrich LLP  
Two Prudential Plaza  
180 North Stetson Avenue, Suite 2000  
Chicago, Illinois 60601  
Tel: 312.222.0800